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Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1972
NO. 72-156

JUAN POMPA ZARATE,

Petitioner,

vs.

UNITED STATES OF AMERICA.

PETITION FOR REHEARING

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TO THE HONORABLE WARREN BURGER, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Juan Pompa Zarate respectfully petitions for rehearing of the order of this Court of October 16, 1972 denying his petition for writ of certiorari. He petitions on the following grounds:

1. The Court has apparently overlooked or failed to consider the total insufficiency of evidence to establish his guilt of the charges, or any of them.

2. The Court has failed to consider and determine whether a defendant in a criminal case can stand convicted based solely on stipulation of the prosecuting attorney and defense attorney as to the

corpus delicti in the case.

3. The Court has failed to consider that the defendant was not confronted by the evidence against him or by an expert witness regarding the evidence and that the defendant did not at any time waive his constitutional rights of confrontation and did not consent personally to any waiver of this fundamental right.

4. The case is on all fours with Giglio v. U.S., 31 L.ed.2d 104, in that the United States Attorney trying the case failed to disclose to the Court that he intended to dismiss the cases against these witnesses after the trial was over. The witnesses did not disclose this evidence before the jury so that their credibility, or lack of it, could be determinated by the jury.

5. The defendant, having been asked by the prosecutor whether he was a Mexican citizen, which he answered in the affirmative, was thereby singled out for invidious treatment by the prosecutor and the government and denied equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Each of the foregoing questions is important in determining whether the defendant had a fair trial and a fair sentence guaranteed by the Fifth Amendment to the Constitution of the United States and were not ruled upon by this Court except as implicit in the denial of certiorari. We believe each of them merits this Court's full scale hearing and an order granting certiorari.

ARGUMENT

Petitioner is a Mexican citizen, residing in Los Angeles for many years. At no time has there been any evidence that he actually possessed or had conspired to possess amphetamines, barbiturates or marijuana.

On or about March 16, 1969 Dorve Robert Croft entered the United States from Mexico in an automobile and was stopped at the Border and apprehended for the alleged possession of marijuana.

On or about April 25, 1969 Robert E. Waggoner was stopped at the Border at the time he was entering the United States from Mexico with tablets alleged to be amphetamines.

On or about June 20, 1969 John Henry Garcia entered the United States from Mexico and was stopped at the Border in an automobile allegedly containing seconal capsules.

The indictment charged that these men entered into a conspiracy to violate Title 21 U.S.C. Sec. 176a.

At the trial, held in 1971, the three men claimed they were going to deliver the merchandise in their cars, the actual contents and substance of which they allegedly did not know themselves, to the defendant Zarate. There never was any proof by any expert or any knowledgeable person that the things removed from their automobiles were narcotics in violation of Title 21 U.S.C. Sec. 176a.

At no time was any narcotic or

amphetamine or barbiturate found in the possession of petitioner or any proof that he had ever conspired to receive them. The sole testimony was that of the alleged co-conspirators, who said they had been promised nothing by the government except to tell the Judge that they had cooperated, and no promise had been made that their cases would be dismissed. There was therefore no substantial evidence of any actual substance which anyone could say was a narcotic or a dangerous drug that was brought into Court for the petitioner or his counsel or his experts to examine. (Giglio v. U.S., 31 L.ed.2d 104)

Without his consent, petitioner was denied his Sixth Amendment right to confrontation by such evidence and the right to cross-examine any expert who might declare the substances were narcotics or dangerous drugs. No physical evidence was offered. (Bruton v. U.S., 391 US 123, 20 L.ed.2d 476; Sixth Amendment, U.S. Constitution)

One cannot cross-examine a stipulation, particularly of his own counsel.

There was no substantial evidence of conspiracy or of aiding and abetting. There was no proof of any possession, transfer, or sale of any items charged in the indictment. A conviction without evidence is a violation of due process of law. (Shuttlesworth v. Alabama, 382 US 87, 15 L.ed.2d 176; Thompson v. Louisville, 362 US 199, 4 L.ed.2d 654)

Uncorroborated testimony of the confessed perpetrators of a crime, inspired by hope of immunity from punishment which in this case has turned to glad fruition,

that the appellant was an instigator or a participator in the perpetration of his crime, is insufficient to establish guilt beyond a reasonable doubt and presents no substantial evidence of it. (Jahnke v. State, 68 Neb. 154, 104 NW 154,158; Sykes v. U.S., 204 F. 909)

An attorney cannot stipulate away the substantial rights of his client nor enter into a stipulation which is tantamount to pleading his client guilty. (People v. Davis, 48 Cal.2d 241, 256; People v. Rogers, 56 Cal.2d 301; People v. Holmes, 54 Cal.2d 442)

Injecting the petitioner's Mexican citizenship into the case was a drop of poison in the whole stream and fatally infected the verdicts and singled out the defendant for racial discrimination and thus invidious treatment, denying him the equal protection of the laws. (Graham v. Richardson, 403 US 365, 29 L.ed.2d 534, 544)

Alien citizens have the same privilege and benefits as is enjoyed by white citizens and are entitled to equal treatment in the courts. (Graham v. Richardson, 403 US 365, 377, 29 L.ed.2d 534, 545)

We pray for rehearing and reversal of the judgments.

Respectfully,

MORRIS LAVINE

Attorney for Petitioner